

*filed  
in open  
Court  
12/2/96  
RJ*

Floyd Raymond, Looker, *Sui Juris*  
c/o HC 63, Box 12-AA  
Nettie [zip code exempt]  
WEST VIRGINIA

*In Propria Persona*

Under Protest, Necessity, and  
by Special Visitation Only

U.S. DISTRICT COURT  
FILED AT WHEELING, WV

DEC -2 1996

NORTHERN DISTRICT OF WV  
OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA

|    |                                    |   |                                |
|----|------------------------------------|---|--------------------------------|
| 21 | UNITED STATES OF AMERICA, [sic]    | ) | Criminal No. <u>1:96-CR-43</u> |
| 22 |                                    | ) |                                |
| 23 | Plaintiff, [sic]                   | ) | NOTICE OF PLEA AND             |
| 24 |                                    | ) | PLEA IN ABATEMENT;             |
| 25 | v.                                 | ) | NOTICE OF MOTION AND           |
| 26 |                                    | ) | MOTION TO STAY PROCEEDINGS     |
| 27 | FLOYD RAYMOND LOOKER, a/k/a RAY,   | ) | FOR FAILING TO COMPLY WITH     |
| 28 | JAMES R. ROGERS, a/k/a RICH, [sic] | ) | GRAND JURY SELECTION POLICY,   |
| 29 |                                    | ) | AND NOTICE OF CHALLENGE AND    |
| 30 | Defendants. [sic]                  | ) | CHALLENGE TO                   |
| 31 |                                    | ) | CONSTITUTIONALITY OF STATUTE   |
| 32 |                                    | ) | Authorities:                   |
| 33 |                                    | ) | 28 U.S.C. 297, 517, 518,       |
| 34 |                                    | ) | 1861, 1865, and 1867(d), (e),  |
| 35 |                                    | ) | F.R.Cr.P. Rule 6(b)(2)         |
| 36 |                                    | ) | F.R.Evid. Rule 201(d);         |
| 37 |                                    | ) | Full Faith and Credit Clause   |

COMES NOW Floyd Raymond, Looker, *Sui Juris*, Citizen of West  
Virginia state and Defendant in the above entitled matter  
(hereinafter "Defendant"), to reserve His fundamental Right to  
abate all jury actions in the instant case, and to Petition this  
honorable Court for a stay of the instant proceedings, pursuant  
to the provisions of 28 U.S.C. 1867(d), pending proper review of  
the Defendant's challenge to the constitutionality of 28 U.S.C.  
1865, and to provide notice of same to all interested parties.  
The offensive statute follows, to wit:

[Please see next page et seq.]

1865. Qualifications for jury service

(a) The chief judge of the district court, or such other district court judge as the plan may provide ... shall determine **solely on the basis of information provided on the juror qualification form and other competent evidence** whether a person is unqualified for, or exempt, or to be excused from jury service. ...

(b) In making such determination **the chief judge of the district court**, or such other district court judge as the plan may provide, **shall deem any person qualified to serve on grand and petit juries in the district court unless he --**

(1) **is not a citizen of the United States** eighteen years old who has resided for a period of one year within the judicial district; ....

[28 U.S.C. 1865, emphasis added]

In stark contrast, it is the policy of the United States that all citizens shall have the opportunity to be considered for service on grand juries in the district courts of the United States. To be constitutional, and to be consistent with its legislative intent, the term "all citizens", as that term is used in 28 U.S.C. 1861, must be construed to include also Citizens of the freely associated compact states who are not also citizens of the United States (a/k/a "federal citizens"):

1861. Declaration of policy

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. **It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States**, and shall have an obligation to serve as jurors when summoned for that purpose.

[28 U.S.C. 1861, emphasis added]

Defendant hereby provides notice to all interested parties of His sworn (verified) statement of law and facts which constitute a substantial failure to comply with the Constitution

1 for the United States of America, as lawfully amended  
 2 (hereinafter "U.S. Constitution"), and with the provisions of 28  
 3 U.S.C. 1861: Declaration of Policy. See 28 U.S.C. 1867(d) and  
 4 (e). The indicting Grand Jury consisted of members all of whom  
 5 were citizens of the United States, not necessarily Citizens of  
 6 West Virginia state. See Dyett v. Turner and State v. Phillips  
 7 *infra*; Right of Election; voter registration affidavits; U.S.  
 8 v. Griffith, 2 F.2d 925 (1924).

9 By way of introduction to the crucial matters of fact and  
 10 law which are discussed at length in Defendant's sworn  
 11 (verified) statement, which is hereby incorporated by reference  
 12 as if set forth fully herein, this honorable Court is hereby  
 13 respectfully requested to take formal judicial notice of the  
 14 additional standing authorities on this question:

15  
 16 **We have in our political system a Government of the United**  
 17 **States and a government of each of the several States.**  
 18 Each one of these governments is distinct from the others,  
 19 and each has citizens of its own .... *Slaughter-House*  
 20 *Cases*

21 [United States v. Cruikshank, 92 U.S. 542 (1875)]  
 22 [emphasis added]  
 23

24 A person who is a citizen of the United States\*\* is  
 25 necessarily a citizen of the particular state in which he  
 26 resides. But a person may be a citizen of a particular  
 27 state and not a citizen of the United States. To hold  
 28 otherwise would be to deny to the state the highest  
 29 exercise of its sovereignty, -- the right to declare who  
 30 are its citizens.

31 [State v. Fowler, 41 La. Ann. 380]  
 32 [6 S. 602 (1889), emphasis added]  
 33

34 There are, then, under our republican form of government,  
 35 two classes of citizens, one of the United States and one  
 36 of the state. One class of citizenship may exist in a  
 37 person, without the other, as in the case of a resident of  
 38 the District of Columbia; but both classes usually exist in  
 39 the same person.

40  
 41 [Gardina v. Board of Registrars, 160 Ala. 155]  
 42 [48 S. 788, 791 (1909), emphasis added]  
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1 v. Texas, 339 U.S. 282; Atkins v. Texas, 325 U.S. 398; Pierre  
 2 v. Louisiana, 306 U.S. 354. Such a violation is not excused by  
 3 the fact that the persons actually selected for jury service  
 4 otherwise possess the necessary qualifications for jurors as  
 5 prescribed by statute. See State v. Jones, 365 P.2d 460.

6 Discrimination in the selection of a grand jury, as  
 7 prohibited by the U.S. Constitution, means an intentional,  
 8 systematic non-inclusion because of class. There are two (2)  
 9 *classes* of citizenship in America. E.g. Gardina supra. The  
 10 statute 28 U.S.C. 1865(b)(1) specifically excludes those classes  
 11 of Citizens who are not mentioned. *Inclusio unius est exclusio*  
 12 *alterius*.

13 The following statute dramatically demonstrates that  
 14 Congress appreciates the difference between the two classes, and  
 15 knows how to discriminate between "white citizens" (read "state  
 16 Citizens") and "citizens of the United States" (a/k/a federal  
 17 citizens). The Act of Congress called the Civil Rights Act, 14  
 18 U.S. Statutes at Large, p. 27, which was the forerunner of the  
 19 so-called 14th Amendment, amply shows the intent of Congress, as  
 20 follows:

21  
 22 ... [A]ll persons born in the United States and not subject  
 23 to any foreign power, excluding Indians not taxed, are  
 24 hereby declared to be **citizens of the United States**; and  
 25 such citizens, of every race and color ... shall have the  
 26 same right, in every State and Territory in the United  
 27 States ... to full and equal benefit of all laws and  
 28 proceedings for the security of person and property, as is  
 29 enjoyed by **white citizens**.

30 [emphasis added]

31 Once a *prima facie* case for the existence of purposeful  
 32 discrimination is made out, the burden shifts to the prosecution  
 33 to prove otherwise. See Whitus v. Georgia, 385 U.S. 545.

1 Reliance on the so-called Fourteenth Amendment to resolve this  
 2 matter is moot, because the Fourteenth Amendment was never  
 3 lawfully ratified, and because the authorities cited *supra* allow  
 4 for the possibility that a Person can be a state Citizen without  
 5 also being a federal citizen, **whether or not the Fourteenth**  
 6 **Amendment was lawfully ratified.** See State v. Phillips, 540  
 7 P.2d 936, 941 (1975); Dyett v. Turner, 20 Utah 2d 403, 439 P.2d  
 8 266, 270 (1968); Full Faith and Credit Clause; 28 Tulane Law  
 9 Review 22; 11 South Carolina Law Quarterly 484; House  
 10 Congressional Record, June 13, 1967, p. 15641 et seq.

11 As such, there is no constitutional provision which makes a  
 12 federal citizen also a citizen of the Union state in which s/he  
 13 resides, nor is there any constitutional provision which states  
 14 that the validity of the public debt shall not be questioned.

15 The judicial history of American citizenship is a subject  
 16 which is rich in nuance and detail, as demonstrated in  
 17 Defendant's sworn (verified) statement. For example, at a time  
 18 when those Islands were in the federal zone, the Supreme Court  
 19 of the Philippine Islands found that "citizenship," strictly  
 20 speaking, is a term of municipal law and, according to that  
 21 Court, it is municipal law which regulates the conditions on  
 22 which citizenship is acquired:

23  
 24 **Citizenship**, says Moore on International Law, **strictly**  
 25 **speaking, is a term of municipal law** and denotes the  
 26 possession within the particular state of full civil and  
 27 political rights subject to special disqualifications, such  
 28 as minority, sex, etc. **The conditions on which citizenship**  
 29 **are [sic] acquired are regulated by municipal law.** There  
 30 is no such thing as international citizenship nor  
 31 international law (aside from that which might be contained  
 32 in treaties) by which citizenship is acquired.

33  
 34 [Roa v. Collector of Customs]  
 35 [23 Philippine 315, 332 (1912)]

1 Indeed, international law is divided roughly into two groups:  
 2 (1) public international law and (2) private international law.  
 3 Citizenship is a term of private international law (also known  
 4 as *municipal* law) in which the terms "state", "nation" and  
 5 "country" are all synonymous:  
 6

7 Private international law assumes a more important aspect  
 8 in the United States than elsewhere, for the reason that  
 9 **the several states**, although united under the same  
 10 sovereign authority and governed by the same laws for all  
 11 national purposes embraced by the Federal Constitution, **are**  
 12 **otherwise, at least so far as private international law is**  
 13 **concerned, in the same relation as foreign countries**. The  
 14 great majority of questions of private international law  
 15 are therefore subject to the same rules when they arise  
 16 between two states of the Union as when they arise between  
 17 two foreign countries, and **in the ensuing pages the words**  
 18 **"state," "nation," and "country" are used synonymously and**  
 19 **interchangeably, there being no intention to distinguish**  
 20 **between the several states of the Union and foreign**  
 21 **countries by the use of varying terminology.**  
 22

23 [16 Am Jur 2d, Conflict of Laws, Sec. 2]  
 24 [emphasis added]

25 Congress does refer to the Union states as "countries." See 28  
 26 U.S.C. 297.

#### 27 RELIEF SOUGHT

28 *Wherefore*, Defendant petitions this honorable Court for an  
 29 indefinite stay of the proceedings in the instant case, pending  
 30 proper review of the substantial issues of law and fact which  
 31 are alleged in this Motion and which are contained in  
 32 Defendant's sworn (verified) statement which is attached hereto  
 33 and incorporated by reference as if set forth fully herein. In  
 34 the event that Defendant should prevail on said issues,  
 35 Defendant reserves His fundamental Right to abate all jury  
 36 action(s) in the instant case, because of the unlawful class  
 37 discrimination which is exhibited by the Jury Selection and  
 38 Service Act, 28 U.S.C. 1861 et seq.



1 Executed on: X 12-2-96

2 Respectfully submitted,

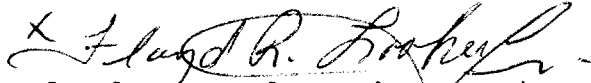
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Floyd Raymond, Looker, Sui Juris

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Citizen of West Virginia state

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all rights reserved without prejudice

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Executed on: November 29, 1996

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Paul Andrew, Mitchell, B.A., M.S.

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Citizen of Arizona state, federal witness,

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Counselor at Law, and Counsel of Record in Fact

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PROOF OF SERVICE

I, Paul Andrew, Mitchell, *Sui Juris*, hereby certify, under penalty of perjury, under the laws of the United States of America, without the "United States," that I am at least 18 years of age, a Citizen of one of the United States of America, and that I personally served the following document(s):

**NOTICE OF PLEA AND PLEA IN ABATEMENT;  
NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS  
FOR FAILING TO COMPLY WITH GRAND JURY SELECTION POLICY,  
AND NOTICE OF CHALLENGE AND  
CHALLENGE TO CONSTITUTIONALITY OF STATUTE:  
28 U.S.C. 297, 517, 518, 1861, 1865, and 1867(d), (e),  
F.R.Cr.P. Rule 6(b)(2); F.R.Evid. 201(d);  
Full Faith and Credit Clause**

by placing one true and correct copy of said document(s) in first class U.S. Mail, with postage prepaid and properly addressed to the following:

**Office of the United States Attorney  
Federal Building  
Wheeling  
WEST VIRGINIA**

**Clerk of Court  
United States District Court  
Wheeling  
WEST VIRGINIA**

**Attorney General  
Department of Justice  
10th and Constitution, N.W.  
Washington  
DISTRICT OF COLUMBIA**

**Solicitor General  
Department of Justice  
10th and Constitution, N.W.  
Washington  
DISTRICT OF COLUMBIA**

Executed on: November 29, 1996



Paul Andrew Mitchell, *Sui Juris*  
Citizen of Arizona state, federal witness,  
Counselor at Law, and Counsel Record in Fact